

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEVON TERRELL ABNEY,

Plaintiff,

v.

MICHIGAN DEPARTMENT OF STATE
POLICE,
CRAIG ROGERS, and
JOHN DOE,

Defendants.

Case No. 2:19-cv-10019-LJM-RSW
Honorable Laurie J. Michelson
Magistrate Judge R. Steven Whalen

**ORDER ADOPTING REPORT AND RECOMMENDATION [23], GRANTING
DEFENDANT CRAIG'S MOTION FOR SUMMARY JUDGMENT [20], AND
DISMISSING COMPLAINT WITH PREJUDICE**

Before the Court is Magistrate Judge R. Steven Whalen's July 31, 2020 Report and Recommendation. (ECF No. 23.) At the conclusion of his report, Magistrate Judge Whalen notified the parties that they were required to file any objections within 14 days of service, as provided in Federal Rule of Civil Procedure 72(b)(2) and Eastern District of Michigan Local Rule 72.1(d), and that "[f]ailure to file specific objections constitutes a waiver of any further right of appeal." (ECF No. 23, PageID.257.) It is now August 28, 2020. Even allowing for extra time because Plaintiff was served by mail and because of the current pandemic, Plaintiff's objections are past due. He has filed none. And neither have Defendants.

The Court finds that the parties' failure to object is a procedural default, waiving review of the Magistrate Judge's findings by this Court. In *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981), the Sixth Circuit established a rule of procedural default, holding that "a party shall file objections with the district court or else waive right to appeal." And in *Thomas v. Arn*,

474 U.S. 140, 144 (1985), the Supreme Court explained that the Sixth Circuit's waiver-of-appellate-review rule rested on the assumption "that the failure to object may constitute a procedural default waiving review even at the district court level." 474 U.S. at 149; *see also Garrison v. Equifax Info. Servs., LLC*, No. 10-13990, 2012 WL 1278044, at *8 (E.D. Mich. Apr. 16, 2012) ("The Court is not obligated to review the portions of the report to which no objection was made." (citing *Thomas*, 474 U.S. at 149–52)). The Court further held that this rule violates neither the Federal Magistrates Act nor the Federal Constitution.

The Court therefore finds that the parties have waived further review of the Magistrate Judge's Report and ACCEPTS his recommended disposition. It follows that Defendant Craig's motion for summary judgment (ECF No. 20) is GRANTED and all claims against Craig are DISMISSED WITH PREJUDICE. Further, the claims against unserved Defendant John Beafore are DISMISSED WITH PREJUDICE. As no other defendants remain in this case, this case is DISMISSED.

SO ORDERED.

Dated: August 31, 2020

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys and/or parties of record by electronic means or U.S. Mail on August 31, 2020.

s/Erica Karhoff
Case Manager to the Hon. Laurie J. Michelson